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|--|-------------|----------------------|---------------------|------------------|
| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/679,749   | 10/06/2003  | Geoffrey Flagstad    | 14969US01           | 2813             |
| 23446  | 7590        | 03/31/2011           |                     |                  |
| MCANDREWS HELD & MALLEY, LTD<br>500 WEST MADISON STREET<br>SUITE 3400<br>CHICAGO, IL 60661 |             |                      | EXAMINER            |                  |
|  |             |                      | PORTER, RACHEL L    |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3626                |                  |
|  |             |                      |                     |                  |
|  |             |                      | MAIL DATE           | DELIVERY MODE    |
|  |             |                      | 03/31/2011          | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                     |                     |
|------------------------------|-------------------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b>              | <b>Applicant(s)</b> |
|                              | 10/679,749                          | FLAGSTAD, GEOFFREY  |
|                              | <b>Examiner</b><br>RACHEL L. PORTER | Art Unit<br>3626    |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 3/7/2011.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-50 and 32-64 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-50 and 32-64 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 06 October 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Notice to Applicant***

1. This communication is in response to the amendment filed on 3/7/2011. Claims 2-4 and 31 have been cancelled and claims 1, 19, and 30 have been amended. Claims 1, 5-30 and 32-64 are pending.

***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/7/11 has been entered.

***Drawings***

3. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because text of the drawings is illegible in Figures 1-3 and the details of the system in Figure 1 cannot be discerned (e.g. ref. no. 30, the details of 40,42,44-46, 48) . Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 5-18 and 19-20, 23-29, 50-59 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

[claim 1]

Based upon consideration of all of the relevant factors with respect to exemplary claim 1 as a whole, claim 1 is held to claim an abstract idea, and is therefore rejected as ineligible subject matter under 35 U.S.C. 101. The rationale for this finding is explained below: the claim includes insufficient recitation of a machine, and there is no transformation of underlying subject matter. In particular, the involvement of a machine, or transformation, with the recited steps is merely nominally, insignificantly, or tangentially related to the performance of the steps, (e.g., data gathering,) or merely recites a field in which the method is intended to be applied. (i.e. the preamble recitation of "computer-implemented").

In the instant case, the actively recited steps of claim 1 require one party "inducing" another party to perform some task. As the Examiner understands the term "inducing," it is persuading or influencing something to be done. The claim further recites obtaining an agreement between two parties (e.g. forming a contract between parties). Claim 1 also recites "receiving" a converted (e.g. retyped or organized) medical record, storing the record, and transmitting (i.e. sending) the record to be stored. To the extent that any machine/apparatus may be involved, it is generically

recited such that it covers any machine capable of performing the claimed step(s) and therefore fails to recite a particular machine or apparatus.

Dependent claim(s) 5-18 when analyzed as a whole are held to be patent ineligible under 35 U.S.C. 101 because the additional recited limitation(s) fail(s) to establish that the claim(s) is/are not directed to an abstract idea, as they contain similar deficiencies to claim 1, and also fail to correct deficiencies of claim 1. Therefore, they are also rejected.

[claim 19]

Based upon consideration of all of the relevant factors with respect to exemplary claim 19 as a whole, claim 19 is held to claim an abstract idea, and is therefore rejected as ineligible subject matter under 35 U.S.C. 101. The rationale for this finding is explained below: the claim includes insufficient recitation of a machine, and there is no transformation of underlying subject matter. In particular, the involvement of a machine, or transformation, with the recited steps is merely nominally, insignificantly, or tangentially related to the performance of the steps, (e.g., data gathering,) or merely recites a field in which the method is intended to be applied. The actively recited steps of claim 19 only recite one party "inducing" (persuading or influencing) another party to perform some task or series of tasks.

Dependent claim(s) 20,23-29, 50-59 when analyzed as a whole are held to be patent ineligible under 35 U.S.C. 101 because the additional recited limitation(s) fail(s) to establish that the claim(s) is/are not directed to an abstract idea, as they contain similar deficiencies to claim 1, and also fail to correct deficiencies of claim 19.

Therefore, they are also rejected.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 64 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 64 recites the limitation "the method of claim 30" in line 1. There is insufficient antecedent basis for this limitation in the claim. Claim 30 recites a system, not a method. It is unclear if applicant intends for claim 64 to recite a system or if claim 64 is intended to be dependent from a method claim. For the purpose of applying art, examiner will interpret claim 64 as being dependent from claim 30 (a system claim).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9.         Claims 1, 5-8, 11-30, 32, 35-46, and 49-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Segal (US 2001/0041991; hereinafter Segal), in view of Joao (6,283,761; hereinafter Joao), and in view of Official Notice (as affirmed in BPAI decision mailed 2/26/10).

As per previously presented claim 1, Segal discloses a method for a service provider to obtain a medical record of a patient from a covered entity in a form allowing said service provider to quickly disclose said medical record to a third party without restriction by the Health Insurance Portability and Accountability Act of 1996, the method comprising the following steps carried out by a service provider that is not the patient or a covered entity:

- (A) inducing said patient to receive said medical record from a covered entity in a first format (Segal: pg. 2, par. [0014]; pg. 12, par. [0151]) (Examiner notes Segal teaches that the patient has ownership and control of their medical records. *As such, other parties interested in acquiring a medical record from a patient would be required to induce the patient to obtain their medical records for them.*)
- (B) inducing said patient to convert said received medical record to a converted medical record in a storage format that is not a medical record from a covered entity by summarizing, abstracting, retyping, redacting, supplementing, organizing, or selecting the medical record, without the service provider modifying the information or its format in the medical record, wherein said storage format is different from said first format (Segal: pg. 3, par. [0027]) Examiner notes Segal teaches a patient, "with guidance from their physician; Segal also discloses an authorized user including a relative of the

patient." (par. 27-28), obtaining their medical record in a first format (i.e., hard copy) and converting said medical record into a storage format (i.e., digital format via computer data entry);

(C) receiving said medical record from said patient in a storage format (Segal: pg. 12, par. [0012]); and

(D) storing said converted medical record in a memory in a form from which said medical record in a memory that is not a medical received from a covered entity in a form from which said converted medical record can be reproduced in said storage format (Segal: pg. 12, par. [0012], par. 27-28).

Segal, however, fails to expressly disclose a method for a service provider to obtain a medical record of a patient from a covered entity in a form allowing said service provider to quickly disclose said medical record to a third party without restriction by the Health Insurance Portability and Accountability Act of 1996, the method further comprising the following steps carried out *by a service provider that is not the patient or a covered entity*:

(D) storing said medical record without data processing said medical record *by a service provider that is not the patient or a covered entity*; [*Emphasis added*];

(E) obtaining agreement in advance with the patient that the service provider shall transmit said medical record to a third party in the storage format as received from the patient under defined conditions; and

(F) transmitting said medical record to a third party in the storage format as received from the patient when the defined conditions occur.

Nevertheless, these features are old and well known in the art, as evidenced by Joao and Official Notice. In particular, Joao and Official Notice disclose a method for a service provider to obtain a medical record of a patient from a covered entity in a form allowing said service provider to quickly disclose said medical record to a third party without restriction by the Health Insurance Portability and Accountability Act of 1996, the method comprising the following steps carried out by a service provider that is not the patient or a covered entity:

(D) storing said medical record without data processing said medical record  
(Joao: col. 2, lines 26-30; col. 3, lines 25-45; col. 4, lines 27-33; col. 6, lines 52-56);

(E) obtaining agreement in advance with the patient that the service provider shall transmit said medical record to a third party in the storage format as received from the patient under defined conditions (Official Notice: Examiner takes Official Notice that the technique of having one party (e.g., intermediary, middle man, straw man, etc.) perform certain actions on behalf of another party through an agreement is notoriously well known and obvious. For example, a power of attorney, a proxy agreement, and executor/trustee agreements, are commonly used to obtain an agreement in advance between multiple parties to consummate an agreed course of action (e.g., transmission of medical records, etc.). Moreover, these techniques were developed and used prior to Applicant's invention to facilitate transactions.); and

(F) transmitting said medical record to a third party in the storage format as received from the patient when the defined conditions occur, (See Official notice from E, and : Joao: Figure 1; col. 14, lines 34-48; col. 41-lines 13-32.— e.g. intermediary computer communicating patient data to a third party computer).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of Joao with the combined teachings of Segal and Official Notice with the motivation of providing healthcare information to pertinent parties (Joao: col. 7, lines 61-65).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of Official Notice with the combined teachings of Segal and Joao with the motivation of facilitating transactions.

As per original claim 5, Segal discloses the method of claim 1, wherein:  
said memory is a portable medium (Segal: pg. 12, par. [0151]).

As per original claim 6, Segal discloses the method of claim 5, wherein" said portable medium is an optical disc (Segal: pg. 12, par. [0151]).

As per original claim 7, Segal discloses the method of claim 1, further comprising:

retrieving said medical record stored in said memory remotely through a computer communications network (Segal: Fig. 1).

As per claim 8, Segal discloses the method of claim 1, further comprising:  
said service provider inducing said patient to update said medical record stored  
in said memory (Segal: pg. 12, par. [0151]).

As per original claim 11, Segal discloses the method of claim 1, wherein:  
said medical record in said storage format is stored in a hierarchical storage system  
(Segal: Fig. 2a).

As per original claim 12, Segal discloses the method of claim 11, wherein:  
said medical record in said storage format is assigned to at least one file folder, said file  
folder containing medical records sharing at least one common attribute (Segal: Fig.  
2a).

As per original claim 13, Segal discloses the method of claim 12, wherein:  
said file folder is assigned to at least one file template, said file template containing file  
folders sharing at least one common attribute (Segal: Fig. 2a).

As per original claim 14, Segal discloses the method of claim 13, wherein:  
a plurality of said file templates are stored in said storage system to form a  
general medical and personal information file of said patient (Segal: pg. 3, par. [0027];  
Fig. 2a).

As per original claim 15, Segal discloses the method of claim 12, wherein:  
said file folder further comprises at least one sub-folder (Segal: Fig. 2a).

As per original claim 16, Segal discloses the method of claim 11, wherein:  
said hierarchical storage system provides hierarchical storage access (Segal: pg. 9, par.  
[0012]). Examiner notes also that, as a standard feature, data storage and operating

systems (e.g., Microsoft Windows) enable a user to define multi-level access parameters to user designated files, folders, drives, databases, and/or applications, among other items.

As per original claim 17, Segal discloses the method of claim 14, wherein: access to a special file template is on a different basis than access to at least one other file template (Segal: pg. 9, par. [0012]). Examiner notes also that, as a standard feature, data storage and operating systems (e.g., Microsoft Windows) enable a user to define multi-level access parameters to user designated files, folders, drives, databases, and/or applications, among other items.

As per original claim 18, Segal discloses the method of claim 7, wherein: said special file template is an emergency file template (Segal: Fig. 2a).

As per original claim 22, Segal discloses the method of claim 20, wherein: said system is provided in the form of software (Segal: pg. 3, par. [0022]).

Claims 19-21 and 23-29 substantially repeat the same limitations of claims 1, 2, 5-11 and 16, and therefore, are rejected for the same reasons given for those claims and incorporated herein.

Currently amended claim 30 substantially repeats the same limitations as amended claims 1 and 2 and therefore, is rejected for the same reasons given for those claims and incorporated herein.

As per original claim 32, Segal discloses the system of claim 30, wherein:

said communication interface is adapted for acquiring said medical record from said patient in said storage format (Segal: pg. 7, par. [0099]; pg. 12, par. [0146]; Fig. 1 and Fig. 4).

As per original claim 46, Segal discloses the system of claim 44, wherein: said special file template is stored in a first memory and said general medical information file is stored in a second memory wherein said first and second memories are different optical discs (Segal: pg. 4, par. [0030]; Fig. 1).

Claims 35-45 and 47-49 substantially repeat the same limitations of claims 5-7, 8-18 and 20, and therefore, are rejected for the same reasons given for those claims and. incorporated herein.

As per previously presented claim 50, Segal discloses the method of claim 1, wherein said medical record is made by the covered entity before said inducing (Segal: par. [0121]).

As previously presented claim 51, Segal discloses the method of claim 1, wherein said inducing occurs before the patient obtains possession of the medical record (Segal: par. [0024], [0027] and [0121]).

As per previously presented claim 52, Segal discloses the method of claim 1, wherein the patient obtains possession of the medical record before said acquiring (Segal: par. [0121]).

As per previously presented claim 53, Segal discloses the method of claim 1, wherein the patient has a computer with Internet access, and said inducing further comprises said service provider inducing said patient to obtain possession in said

patient's computer of said medical record in digital form from a covered entity (Segal: par. [0024], [0026], [0027] and [0108], fig. 1).

As per previously presented claim 54, Segal discloses the method of claim 1, further comprising said service provider inducing said patient to acquire said medical record in a digital storage format without intervention of any entity or person other than said covered entity (Segal: Segal: par. [0024], [0026], [0027] and [0108], fig. 1).

Claims 55-64 substantially repeat the same limitations as those recited in claims 50-54 and therefore, are rejected for the same reasons given for those claims and incorporated herein.

4. Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Segal, Joao, and Official Notice (as affirmed in BPAI decision mailed 2/26/10), as applied to claim 1 above, and further in view of Judson et al. (WO 02/063415, hereinafter Judson).

As per original claim 33, Segal discloses system of claim 30, wherein: said communication interface is adapted to obtain the agreement of said patient to allow transmission of said medical record to a health care provider (Segal: pg. 3, par. [0028]).

Segal, however, fails to expressly disclose the system of claim 30, wherein: that the transmission to the medical record to the provider is under defined conditions.

Nevertheless, this feature is old and well known in the art, as evidenced by Judson. In particular, Judson discloses the method of claim 1, further comprising: under defined conditions (Judson: page 23, par. 4-page 24, par. 1).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of Judson within the combined teachings of Segal, Joao, and Official Notice with the motivation of managing a user's (e.g., patient) medical data (e.g., genomic data) (Judson: pg. 2, par.5 ) and allowing a physician to access medical information for a patient if a patient is critically ill or unconscious. (Judson: page. 24, par. 1)

As per original claim 34, Segal fails to expressly disclose the system of claim 30, wherein:  
communication interface is adapted to obtain said agreement before a defined condition arises.

Nevertheless, this feature is old and well known in the art, as evidenced by Judson. In particular, Judson discloses the method of claim 3, further comprising:  
said agreement is obtained before a defined condition arises (Judson: page 23, par. 4-  
page 24, par. 1)

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of Judson with the combined teachings of Segal, Joao, and Official Notice with the motivation of managing a user's (e.g., patient) medical data (e.g., genomic data) and decreasing unauthorized access to medical data (Judson: pg. 2, par.5 and page 23, par. 4-page 24, par. 1)

5. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Segal, Joao, and Official Notice (as affirmed in BPAI decision mailed 2/26/10), as

applied to claim 1 above, and further in view of Mok et al. (US 2003/0140044; hereinafter Mok).

As per previously presented claim 9, Segal fails to expressly disclose the method of claim 1, further comprising:

    said service provider inducing said patient to provide other information that is not a medical record, and storing said other information in said memory.

Nevertheless, this feature is old and well known in the art, as evidenced by Mok. In particular, Mok discloses the method of claim 1, further comprising:

    said service provider inducing said patient to provide other information that is not a medical record, and storing said other information in said memory (Mok: pg. 14, par. [0127]).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of Mok with the combined teachings of Segal, Joao, and Official Notice with the motivation of including other types of records where a person needs his/her records collected (Mok: pg. 14, par. [0127]).

As per original claim 10, Segal fails to expressly disclose the method of claim 9, wherein:

    said other information comprises information selected from the group consisting of a living will, investment portfolio, life insurance and a credit arrangement.

Nevertheless, this feature is old and well known in the art, as evidenced by Mok. In particular, Mok discloses the method of Claim 9, wherein:

    said other information comprises information selected from the group consisting of

a living will, investment portfolio, life insurance and a credit arrangement (Mok: pg. 14, par. [0127]) (The Examiner has noted insofar as claim 10 recites "selected from the group consisting of a living will, investment portfolio, life insurance and a credit arrangement," an investment portfolio has been recited.).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of Mok with the combined teachings of Segal, Joao, and Official Notice with the motivation of including other types of records where a person needs his/her records collected (Mok: pg. 14, par. [0127]).

#### ***Response to Arguments***

6. Applicant's arguments filed 3/7/11 have been fully considered but they are not persuasive.

With regard to Applicant's arguments, it is respectfully submitted that the Examiner has applied new citations and passages from the Segal, Joao, Judson, and Mok references to the amended features of amended claims 1, 19 and 30.

(A) Applicant argues that the Segal reference does not disclose the recited features of invention.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The Segal reference has been relied upon in combination with Joao and Official Notice, along with additional references in the dependent claims to address the features of the claims. Moreover, Applicant argues, on page 17 of the response, the applicant argues that Segal is problematic because the patient does not own the record, and it is maintained by "covered entities." However, the claim and the specification do not provide definitions of "covered entities," the specification merely provides examples.

Moreover, it is noted that the Joao reference has been relied upon to disclose the storage of the medical record by a third party. (col. 14, lines 34-48) (an intermediary communication device or computer 50 (hereinafter referred to as "intermediary computer 50") which is associated with an intermediary, a broker, an agent, and/or any other individual and/or entity, that can utilize the present invention in order to act for and/or on behalf of any other individual, party, or entity.)

(B) Applicant has challenged use of Official Notice.

In response, the Examiner's use of Official Notice was been upheld in the BPAI decision mailed 2/26/10.

#### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Tritch et al (US 2003/0040939A1)--discloses a system and method for storing advance medical directives.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL L. PORTER whose telephone number is (571)272-6775. The examiner can normally be reached on M-F, 10-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Morgan can be reached on (571) 272-6773. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. L. P./  
Examiner, Art Unit 3626

/C. Luke Gilligan/  
Primary Examiner, Art Unit 3626